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MAR 18 2003

Federal Communications Commission
Office of the Secretary

From: Elegy, Daniel, SOLCM
To: Mike Powell
Date: 2/4/03 10:27PM
Subject: FW: telcom deregulation

> -----Original Message-----

> From: Elegy, Daniel, SOLCM
> Sent: Tuesday, February 04, 2003 7:12 PM
> To: 'mpowell@fcc.gov'
> Cc: 'kabernat@fcc.gov'; 'mcopps@fcc.gov'; 'kjmweb@fcc.com'; 'jadelste@fcc.gov'
> Subject: telcom deregulation

> Dear Chairman Powell,

> I have a deepening concern with the direction you are going with telecom deregulation. As a 20-year employee of AT&T, PacBell and Ameritech, my entire career has been impacted by deregulation. And, I believe that deregulation has generally been very healthy for the industry as a whole. It is my personal experience that AT&T has become a completely market driven machine - its actions are driven by competitive forces that demand innovation and strong business management. It is also my experience, having worked for Ameritech just 4 short years ago, that the local companies are the same plodding monopolies that they have always been. If these companies that control wireline access into most businesses and residences, like robber barons of the middle ages, weren't FORCED to open access to local markets then there would be no competition whatsoever in their markets. They argue that wireless services are competing with them but then they operate their own wireless companies. The cable companies have provided the only true competition to legacy local access technologies. However, most of the baby bells entered the cable markets and then bailed. Why? Two reasons: 1) they are plodding monopolies with little innovative backbone who are successful only because of their massive political clout and 2) its very costly to build new local infrastructure.

> If you believe that the rivals of the ILECs will build more networks and spend more to stimulate the economy if they don't have access to the ILEC networks at reasonable rates then you are sorely mistaken. Because, as the ILECs are being allowed to compete with the IXCs in the interchange markets the IXCs would be prohibited from having immediate competitive access to the local exchange markets. The IXCs will not have the cash needed to build billions of dollars of local access facilities because the ILECs are being allowed to drain funds from the IXC market. The ILECs will get to have their cake and eat it too.

> You've been quoted as saying (excerpt is from the NY Times 02/02/03): "If the status quo is so compelling," he said, "how is it that innovators and incumbents are suffering?" Well, this has little to do with regulation and more to do with the lack of regulation, particularly by the SEC. When companies like Qwest, Global Crossings and WorldCom are allowed to operate businesses based on questionable and/or fraudulent accounting without any real oversight until they blow up, everybody pays. These crooks have been allowed to overstate revenues and profits and mask their losses while lowering their prices below their costs harming everyone in the industry.

> I understand that you support certain changes that would broadly exempt the Bell companies from being forced to let rivals have low-cost access to new equipment for high-speed Internet services - a market with enormous potential. Well, if you feel that way then you should also keep the Bell companies out of IXC markets. You will simply destroy one of the most successful, and competitive, elements of the telecom industry. The ILECs hate competing with the IXCs because the IXCs know how to run competitive businesses and the ILECs do not.

> I think it would be to everybody's benefit if you modify your positions. I don't necessarily disagree with everything you are doing. I do think you need to slow it down and take a broader perspective.

> I appreciate your consideration of my opinion.

>

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96-88

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February 4, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: CC Docket Nos. 01-338, 96-98, 98-147, Review of the Section 251
Unbundling Obligations of Incumbent Local Exchange Carriers -- Ex
Parte Filing**

~~Dear~~ Ms. Dortch:

As pointed out in El Paso Networks, LLC ("EPN's"), December 20, 2002 letter to the Commission in these dockets (a copy of which is attached hereto), the Commission (1) should not determine that CMRS providers are not eligible to purchase UNEs and (2) should not preclude CLECs from purchasing UNEs to provide wholesale telecommunications services to CMRS providers. EPN also suggested that the Commission clarify that the definitions of UNE loops and transport explicitly include service to cell sites and other carrier locations.

EPN stresses in the strongest possible terms that even if the Commission determines that CMRS providers are not eligible to purchase UNEs, which it should not for all of the reasons stated in EPN's December 20, 2002 letter, that determination has no bearing on whether CLECs would be impaired without access to UNEs to provide telecommunications services to CMRS providers. The 1996 Act requires ILECs to provide unbundled access to "any requesting telecommunications carrier for the provision of a telecommunications service."¹ This requirement clearly encompasses a CLEC's provision of telecommunications service to a CMRS provider. There is no legal or policy basis under the Act for determining that CLECs are unimpaired in their ability to provide telecommunications service to CMRS providers without access to UNE loops or transport to provide. As the US Court of Appeals for the District of Columbia suggested, the 1996 Act "require[s] a more nuanced concept of impairment than is reflected in findings such as the Commission's -- detached from any specific markets or market

¹ 47 U.S.C. § 251(c)(3).

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categories.”” Thus, regardless of the outcome in the Commission’s consideration of CMRS carrier access to UNEs, the Commission must *independently* evaluate whether the removal of such network elements will impair the ability of CLECs that seek to offer telecommunications services to CMRS providers to provide those services.³ Any determination by the Commission regarding the availability of network elements to *requesting carriers* that serve CMRS providers that does not include an appropriate evaluation of “impairment” under the 1996 Act would be unreasonable and arbitrary and capricious.

Rather than excluding facilities that serve CMRS providers from the ILECs’ unbundling obligations, the Commission should clarify the definitions of UNE loops and transport to explicitly encompass such service. Specifically, the Commission should clarify its definition of UNE loops to uncontroversially include cell sites and other wholesale customer (i.e., carrier) locations; specifically identify wireless carrier cell sites as possible loop termination points; and remove the term “end user” from the definition of local loop entirely. In the alternative, the Commission should clarify its definition of interoffice transport UNEs to provide that interoffice transport may be between switches or wire centers owned by ILECs and other telecommunications carriers including CMRS carrier Mobile Telecommunications Switching Offices in addition to carrier locations where traffic is aggregated and/or routed, such as cell sites. By adding these express clarifications to its UNE definitions, the Commission would advance the pro-competitive goals of the Act by ensuring that ILECs cannot impede CLECs’ ability to provide wholesale telecommunications services to CMRS and other carrier customers.

³ *US Telecom Ass’n v. FCC*, 290 F.3d 415, 426 (D.C. Cir. 2002).

Any impairment analysis that focuses on the provision of service to CMRS carriers must analyze the alternatives available in that market and whether self provisioning is economically efficient and will not lead to investment in wasteful and duplicative facilities. *US Telecom Ass’n v. FCC*, 290 F.3d at 427. In considering alternatives the Commission must reiterate its long standing belief that the availability of ILEC special access services are not considered alternatives for purposes of the impairment analysis. See *Local Competition Order*, 11 FCC Rcd 15644, ¶ 287; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 369, ¶ 354 (1999). If the Commission were to consider the availability of special access sufficient to warrant a finding of non-impairment it would seem that unbundling would cease to be an option in any market for any service because the ILEC’s service is almost always available.

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February 4, 2003
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Respectfully submitted,

/s/

Russell M. Biau
Patrick J. Donovan
Joshua M. Bobeck

cc: Chairman **Powell**
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December 20, 2002

VIA ELECTRONIC FILING

Marlene H. Donch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Ms. Dortch:

In this letter, El Paso Networks, LLC, ("El Paso") responds to the recent *ex parte* letter in this proceeding from BellSouth concerning the obligation of incumbent local exchange carriers ("ILECs") to provide unbundled access to CMRS cell sites.¹

CLECs Are Eligible to Obtain UNEs To Provide Service to CMRS Customers

In its letter, BellSouth claims, in effect, that the Commission should establish a categorical exclusion from unbundling obligations for service provided to CMRS carriers, whether unbundled access is ordered directly by CMRS providers or by CLECs to serve CMRS providers.² BellSouth contends that the 1996 Act did not intend to encourage CMRS service, and that CMRS providers, and presumably CLECs seeking to provide service to CMRS providers, are not impaired without unbundled access to cell sites.³

The Commission should use this proceeding to definitively reject BellSouth's arguments on this and other points. The 1996 Act could not have been clearer in establishing that ILECs must provide unbundled access "to any telecommunications carrier for provision of a telecommunications service."⁴ There is no exclusion for CMRS service. The Commission in

Lena to Marlene H. Dortch, Secretary from W. W. Jordan, Vice President-Federal Regulatory, BellSouth, CC Docket No. 01-338, filed November 27, 2002 ("BellSouth Letter").

BellSouth Letter at 7-8.

Id.

⁴

47 U.S.C. section 251(c)(3).

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the *Local Competition Order* determined that “[CMRS] carriers meet the definition of a ‘telecommunications carrier’ because they **are** providers of telecommunications services as defined in the Act and are thus entitled to the benefits of Section 251(c), which includes the right to request interconnection and obtain access to unbundled network elements at any technically feasible point in an incumbent LEC’s network.” Moreover, the Act was intended to promote a competitive market for telecommunications service generally. There is no basis in the Act or its legislative history supporting a conclusion that the Act was not intended to promote wireless service as a competitive alternative in the local marketplace. In fact, the Act specifically provides that the Commission may determine that wireless providers should be treated as local exchange carriers and subject to all the same obligations as CLECs.⁶ BellSouth’s view also violates the Commission’s long-standing goal of technology neutrality. As the Commission explained in the *Local Competition Order*, “all telecommunications carriers that compete with each other should be treated alike regardless of the technology used.” It would therefore be absurd to interpret the Commission’s rules, as BellSouth suggests, to preclude unbundling of circuits based on the type of carrier the circuit serves. The Commission should not be favoring one group of local service providers over another based on technology or for any other reason.

El Paso notes that BellSouth refuses apparently even to provide UNE access to a CMRS Mobile Telecommunications Switching Office (“MTSO”). This is completely indefensible because at a minimum the connection between a BellSouth central office and a MTSO is a facility between an “ILEC switch or wire center and a switch or wire center of a requesting carrier.” In contrast, other carriers including SWBT will provide UNE access to the MTSO, although as described in this letter SWBT’s policy towards providing UNE access to other portions of CMRS networks, specifically cell sites, is totally unsatisfactory. This further demonstrates the unreasonableness of BellSouth’s sweeping denial of UNE access to CMRS networks. Accordingly, the Commission should reject BellSouth’s harmful and anti-competitive position that CMRS providers, and CLECs that provide service to them, are *per se* ineligible for UNE access.

In numerous filings in this docket, El Paso and others have exhaustively explained why CLECs are impaired without unbundled access to high capacity loops and transport and dark fiber.⁷ Essentially, in the vast majority of instances there are no alternatives to the ubiquitous ILEC loop, transport, and dark fiber network facilities. Without access to ILEC network elements, CLECs would be unable to reach their customers or transport traffic. The fact that in some cases the customer being served is a CMRS provider makes absolutely no difference with respect to an impairment analysis. In this connection, it is important for the Commission to understand that the only wireless portion of a CMRS provider’s network is the link from the base

Local Competition Order, 11 FCC Rcd 15989, para. 003 (1996).

⁶ 41 U.S.C. Section 153(26).

⁷ *Local Competition Order* 1993.

⁸ See 41 CFR § 319(d).

Comments of ALTS, El Paso et al., CC Docket No. 01-338, at 45 – 56

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station to the customers handset.¹⁰ CMRS providers are wholly dependent on wireline networks for connections within their networks between the MTSO and base stations.¹¹ Accordingly, CLECs are impaired without unbundled UNE access to cell sites and the Commission should so find in this proceeding.

Incumbent ILEC Facilities that Serve CMRS Carriers are UNEs
Regardless of Whether the Commission Decides to Define Them as Loops or Transport

There can be little dispute that the facilities ILECs deploy to serve CMRS carriers are unbundled network elements, either loops or transport. BellSouth's letter fails to address the broader question of whether these circuits are "network elements" that are subject to Section 251(c)(3) of the Act. The answer to that question is "yes."

The definition of "network element" in the Act, and as implemented by the Commission, clearly encompasses the facilities ILECs deploy to provide CMRS carriers with the wireline components of their networks. The 1996 Act defines "network element" as "a facility or equipment used in the provision of telecommunications service."¹² ILEC copper, fiber and equipment connecting a central office to a cellular tower site, or a MTSO are certainly facilities, and are plainly "used in the provision of a telecommunications service." BellSouth does not even attempt to contradict the obvious conclusion that § these facilities are network elements. Instead, it simply ignores the issue.

BellSouth's argument regarding impairment of CMRS carriers is plainly wrong under either a loop or transport unbundling analysis. CMRS carriers face the same impairments CLECs face in obtaining alternative sources of supply for their wireline transport needs. Further, CMRS carriers must have access to a ubiquitous loop and transport network in order to provide market wide coverage that is essential in the CMRS marketplace. There can be no dispute that regardless of whether CMRS carriers are impaired, CLECs are impaired without access to those facilities.

For example, in the Texas markets where El Paso competes to serve CMRS carriers with an alternative to SWBT's transport offerings, a single CMRS carrier may have over 400 cell sites that must be interconnected to its MTSOs in order to provide customers with seamless coverage preventing dropped calls. There is no alternative to the ILEC facilities that serve these locations. CMRS carrier cell site locations are generally spread across a wide geographic area and some loops might be several miles in length making it extremely cost prohibitive for a CLEC (or a CMRS carrier) to deploy its own loop facilities. In fact, the analysis for determining whether CLECs and/or CMRS carriers are impaired without access to ILEC facilities deployed to serve cell sites is no different than the analysis for loops in general.

¹⁰ Petition For Declaratory Ruling, AT&T Wireless Services, Inc. and VoiceStream Wireless, Corp., CC Docket No. 96098, filed November 19, 2002, p. 14.

¹¹ *Id.*

¹² 41 U.S.C. § 153(29).

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BellSouth's strained interpretations of the Act and Commission rules will **impe**de the development of whole sale competition to the ILECs and the development of CMRS competition **as** a retail alternative to the ILEC basic local exchange services. As noted, the Act provides that ILECs must provide unbundled access to network elements to "any **requestin**g telecommunications carrier for provision of a telecommunications service."¹³ **Whol**esale carriers are telecommunications carriers and the services they **pmvid**e are telecommunications services. BellSouth's interpretation that **app**arently loops may only be obtained to premises of **non-car**riers or retail customers could effectively thwart whole sale carriers' ability to provide service.

Further, wholesale services promote the **goals** of the **Act** by enabling other carriers to provide competitive whole sale services to retail customers. Therefore, in addition to the fact that there is **no** basis **under** the language of the Act for restricting the availability of UNEs to non-carrier premises, the Commission should reject BellSouth's view because of its **harmful** effect on the whole sale marketplace. In the Notice, the Commission asked for **comme**nt on the viability of a third party intramodal whole sale facilities **market**.¹⁴ El Paso's position in the Texas market demonstrates that such a market is viable if the Commission develops policies that **low** such a market to develop.

The Commission should confirm the ILECs' obligation to provide unbundled **access** to these network elements in its Triennial review proceeding. **As** the Commission observed in the **UNE Remand Order** wire less **technolo**gies, including mobile telephony were not yet "viable alternatives to the incumbent's wireline Imp facilities."¹⁵ Of course, if the Commission intends to **see** that **possibilit**y through its logical **con**clusion, it must foster **the** development of a competitive whole sale market for the wireline services an which CMRS carriers rely to provide service to American consumers. If the Commission **uses** the Triennial Review to preserve the ability of CLECs such as El Paso to **use** UNEs to develop whole sale competition then that internodal competition has a chance to become reality. However, if the Commission adopts the exclusionary policies offered by BellSouth it will establish a market where all retail **comp**etitors rely on the Same **whol**esale supplier, the ILEC. **As** the Commission is **aware**, a competitive whole sale market is critical to the proper functioning of a competitive retail market.

It is not **surprisin**g that BellSouth would proffer this view as it seeks to maintain its advantage in the CMRS market. BellSouth through its CMRS affiliate has a distinct advantage in pricing CMRS service because it has access to its **own** wireline facilities, in effect, at **cost**, while non-affiliated **CMRS** carriers must pay retail rates for identical services.

The Commission should not allow ILECs to avoid their statutory obligations to provide unbundled access to facilities that serve CMRS carrier locations. Facilities **servin**g these carrier locations must be available **as some** form of UNE, whether loop or transport

¹³ 47 U.S.C. section 251(c)(3).

¹⁴ Notice at ¶ 30.

¹⁵ LINE Remand Order IS FCC Rcd at 3782, ¶ 188

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**The Commission Would be Fully Justified in Finding that Cell Sites Are
 Customer Premises Qualifying for UNE Loops**

BellSouth states that CLECs **are** not eligible to obtain UNE loop access to cell sites because cell sites do not constitute end-user customer premises. Section 51.319(a)(1) of the Commission's rules defines the loop as a transmission facility between a distribution frame in an incumbent LEC central office and the loop demarcation point at "an end-user customer premises."¹⁶

As with its request for a sweeping exclusion **from** unbundling obligations for CMRS, the Commission should reject this definitional chicanery which is simply designed to define away the ability of carriers to sell loops to other carriers. There is nothing in the language of the Commission's definition of a Imp or the **UNE Remand Order**¹⁷ suggesting that loops cannot serve carriers. The Commission's rules should not be read so narrowly to preclude the use of LINE Imps to provide wholesale service to carriers simply because they do not meet BellSouth's threshold for a retail "end user." This distinction makes little sense in the case of CMRS carrier cell sites where the end of the wired portion of the CMRS network is at the cell site. Both legally and technically, the Central Office to cell site circuit is the proverbial "last mile" of the CMRS carriers' national wireline network. For the wholesale CLEC, the cell site **is** the customer premise. Thus the CO to cell site circuit is the **loop**, and like very other loop should be available as a UNE allowing the benefits of the 1996 Act to flow to mobile phone consumers.

The existing interpretation of loop offered by BellSouth unnecessarily creates tension with the common carrier obligations of telecommunications carriers. Consider the example of a cell site location that the CMRS carrier also uses for administrative traffic. There is no dispute that when consuming services for its own administrative use that a CMRS carrier is by any retail interpretation an "end user." Thus, BellSouth's interpretation of the UNE loop definition would require that telecommunications carriers such as El Paso investigate how its CMRS customers will use the telecommunications services El Paso provides before ordering the UNEs needed to fulfill the customer's request. The Commission should clarify for the ILECs that these circuits are available as UNEs when requesting telecommunications carriers sell on a wholesale basis to CMRS carriers and that CMRS carriers cannot be relegated to high-priced tariffed rates indefinitely.

**The Commission Would be Equally Justified in Finding that
 Cell Sites Qualify for UNE Transport**

Assuming, arguendo, that cell sites are not eligible for LINE loop access, which would be incorrect, then cell sites would nonetheless be eligible for UNE transport access. BellSouth contends, however, that it is not obligated to provide UNE transport to CLECs for the purpose of connecting to CMRS cell sites because these transport facilities do not fall within the

¹⁶ 41 C.F.R. Section 51.319(a)(1).

¹⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, released November 5, 1999 ("UNE Remand Order").

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Commission's current definition of unbundled transport because cell sites do not contain switches. Section 51.319(d)(1)(i) of the Commission's rules provides that interoffice transmission facility network elements include "dedicated transport between wire centers owned by incumbent LECs **or** requesting telecommunications carriers, **or** between switches owned by incumbent LECs or requesting telecommunications **carriers**."¹⁸ Thus, the FCC rules clearly do not require that a carrier location contain a switch to fall within the ambit of LINE transport. As long as the carrier location is either a switch or **wire** center it is within the scope of 319(d)(1)(i).

BellSouth's letter utterly fails to address the definition of wire center and instead propagates the fallacy that carrier locations must contain switches in order to fit within the definition of LINE transport. Such a construction of this rule makes **no sense** far if all wire centers contained switches the Commission's use of the word "or" in 319(d)(1)(i) would be **superfluous**. As technology continues to change, growing numbers of wire centers have **no** traditional circuit switches, **a requirement often** argued for by SBC. Traditional circuit switching is becoming obsolete and increasingly **unnecessary** for the many different requirements of telecom carriers, and must not be a factor in the availability of transport UNEs.

Despite the fact carrier locations need not contain switches to fall under the definition of UNE transport, cell sites do perform switching functions. **As pointed out** to the Commission in this proceeding:

CMRS base stations contain sophisticated electronics that, together with other elements of the CMRS network, provide end users with the **same**, if not greater functionality than wireline end office switches. Without this base station equipment, calls could not be terminated to, or received from, end **users**."

The specific switching functions that base stations perform include transmitting signaling information to the MTSO that registers a mobile customer's location; opening the communications path; and monitoring the quality and signal strength of the **call**.²⁰ The base station **also** performs concentration, which is **one** of the primary functions of a switch.²¹

Moreover, the Commission has recognized that switching functions may be performed other than by traditional circuit switching. For **example**, the Commission has determined that a paging terminal **performs** switching, although not circuit switching. The Commission has found that **a** paging terminal performs switching in that "it receives calls that originate **on** the LEC's network and transmits the calls from its terminal to the pager of the called party" and "directs the page to an appropriate transmitter in the paging network, and then that **transmitter** delivers the page to the recipient's paging unit." The Commission stated that the paging "terminal and

¹⁸ 47 C.F.R. Section 51.319(d)(1)(i).

¹⁹ Comments of AT&T Wireless Services, Inc., CC Docket No. 01-338, filed April 5, 2002, p. 27.

²⁰ *Id.*

²¹ *Id.* p. 28.

²² *TSR Wireless LLC v. U.S. West Communications, Inc.*, 11 FCC Rsd 11166 (2000), para. 22. ("TRs Wireless").

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the network thus perform routing or switching and termination”²³ and that this was the “equivalent of what an end office switch does when it transmits a call to the telephone of the called party.””

The type switching invoked in paging is similar to, but actually less than, the switching that is performed by cell sites. While cell sites receive calls originating on the LEC’s network and transmit the calls to the cell phone of the called party, which by itself constitutes switching, CMRS networks do more in that they establish two-way voice connections between the calling and called party, although this requires coordination between central controllers at the MTSO and equipment at the base station.²⁵

Accordingly, BellSouth’s contention that cell sites are not eligible for UNE transport because switching is not performed there is totally invalid. The Commission should determine that cell sites perform switching and, therefore, that transport links to base stations qualify for UNE dedicated transport to cell sites.

**To the Extent Necessary the Commission Should Clarify the Definitions of UNE
Loops and Transport to Explicitly Encompass Cell Sites**

As discussed above, BellSouth’s arguments that CLECs are not eligible to obtain UNE loop or transport access to cell sites because, respectively, cell sites are not end use premises and do not contain switches are invalid. However, to resolve this issue definitively the Commission should clarify its definitions of loops and transport to explicitly provide that ILECs must provide unbundled access to cell sites. The Commission should clarify its definition of loops to provide either that end-user customer premises include cell sites and other wholesale customer (i.e. carrier) locations; identify cell sites as a possible termination point for loops; or remove the term “end-user” from the definition. Similarly, the Commission should clarify its definition of interoffice transport UNEs to provide that interoffice transport may be between switches or wire centers owned by LECs and carrier locations where traffic is aggregated and/or routed such as cell sites. In this proceeding, El Paso has urged the Commission to establish dark fiber as a separate network element.²⁶ The Commission should provide in its definition of dark fiber UNEs that ILECs must provide access to unbundled dark fiber for serving cell sites or other carrier locations including but not limited to MTSOs. These clarifications would facilitate achievement of the pro-competitive goals of the Act by assuring that ILECs may not thwart CLECs’ ability to provide wholesale services to CMRS and other carrier customers

UNE Access to Cell Sites May Be Judged by SWBT Practice

The eligibility for UNE access to cell sites may be judged to some extent by the prior practice of ILECs. In this connection, SWBT routinely provisioned over several months starting

²³ *Id.*

²⁴ *Id.*

²⁵ Comments of AT&T Wireless Services, Inc., CC Docket No. 01-338, filed April 5, 2002, fn. 76

²⁶ Reply Comments of El Paso Networks, LLC, CC Docket No. 01-338, filed July 22, 2002.

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in May 2002 approximately the first 80 requests of El Paso for UNE loop access to cell sites. These were provisioned as ~~DS-1~~ loop UNEs ordered under SWBT's mechanized ordering process through Local Service Requests. The fact that SWBT routinely provisioned them and included the cell sites in its mechanized list of customer sites eligible for loops shows that cell sites are, and should be, eligible for UNE loop access. Subsequently, SWBT determined that it would no longer provision UNE requests for cell sites, which, as explained below, is the subject of a proceeding before the Texas Public Utility Commission ("TPUC").

El Paso Has Obtained Temporary Relief in Texas

As part of its apparent change of policy concerning UNE access to cell sites, SWBT initiated in November 2002 a proceeding before the TPUC seeking to prevent El Paso from obtaining UNE access to cell sites. The TPUC granted El Paso's request for interim relief and directed SWBT to continue provisioning DS-1 loop UNEs to cell sites pending further proceedings.²⁷ While this further substantiates that ILECs must provide UNE access to cell sites, this relief at this time is interim in nature. SWBT will continue to vigorously pursue its theory that it is not required to provide UNEs to CLECs seeking to provide service to CMRS providers. Accordingly, El Paso urges the Commission to promptly address this issue and determine that ILECs must provide UNE access to CMRS cell sites.

²⁷ *Complaint of Southwestern Bell Telephone L.P. for Post Interconnection Agreement Dispute Resolution With El Paso Networks, LLC, Order Granting Interim Relief and Setting Entry for the Procedural Schedule and Protective Order, Order No. 2, Docket No. 26901, Public Utility Commission of Texas, November 22, 2002*

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December 18, 2002
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Counsel for El Paso Networks, LLC.

cc: Christopher Libertelli
Matthew Brill
Jordan Coldstein
Dan ~~Gonzalez~~
Lisa Zaina
William Maher
Jeffrey Carlisle
Carol ~~Mattey~~
Scott Bergmann
Jessica Rosenworcel
Thomas ~~Navin~~
~~Robert~~ Tanner
Jeremy Miller
Julie Veach
Daniel Shiman

ORIGINAL
EX PARTE OR LATE FILED

From: Bill Newton
To: Mike Powell, Kevin Martin, Kathleen Abernathy, Commissioner Adelstein. Michael Copps
Date: 2/13/03 10:28AM
Subject: <No Subject>

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MAR 18 2003

Federal Communications Commission
Office of the Secretary

Florida Consumer Action Network
2005 Pan Am Cir Ste 200
Tampa, FL 33607

February X, 2003

Dear Chairman Powell and Commissioners Abernathy, Adelstein. Copps and Martin:

96-98

Almost seven years after Congress passed the groundbreaking Telecommunication Act, the promise of real local phone competition is finally starting to become a reality for consumers in Florida.

According to the most recent data released by your agency, new market entrants provide service to more than nine percent of local telephone lines in Florida, up from six percent in December 1999. As a result, tens of thousands of Florida residents are now benefiting from greater choice and better pricing in local phone service. .

However, just as competition begins to take hold, we understand that the Commission is considering a proposal that would significantly scale back or even eliminate the very regulations- known as Unbundled Network Element Platform, or UNE-P -that have played a critical role in promoting the recent surge in local phone competition.

Were the Commission to initiate such a major reversal of policy, all the progress that has been made in Florida to bring real local phone competition to residential markets would be reversed. Once again, consumers would be stuck with little or no choice, and the savings and service improvements that accompany increased competition would quickly evaporate.

Rather than adopting policies that would only serve to undermine telecom competition, we urge the Commission to demonstrate its commitment to the interests of consumers, and the future of competition, by reaffirming your support for UNE-P

Indeed, according to a report issued recently by the National Association of State Consumer Advocates, the continued existence of UNE-P is vital to the future of local competition in local markets across the country.

The report found that, in many markets, the vast majority of residential and small business consumers who have switched their local phone service to a new competitor are served by market entrants who rely on the UNE-P system. In Texas, for example, competitors that depend on UNE-P provide service to 77 percent of switched customers. Without the current UNE-P structure, the report concludes, "it is unlikely that even the limited amount of residential competition that exists today could survive."

It is also critical that the Commission preserve the position of state regulators in maintaining and promoting competition in our telecom markets. State utility regulators like the Illinois Commerce commission have played a vital part in opening local telephone markets across the country up to competition, and we believe that they are best placed to make decisions that impact local markets.

For local phone competition to continue to develop and flourish, state authorities must continued to have the flexibility to carry out their Congressionally mandated role of keeping local telephone markets open, and setting fair UNE-P prices.

Moreover, the Commission proposals that limit open access to communications networks, including fiber

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networks are wrongheaded. Without open, non-discriminatory access to broadband networks, consumers will not realized the full potential of the Internet. Recent FCC decisions on broadband access policy threaten to inhibit innovation ad consumer choice in the high-speed Internet marketplace.

The Federal Communications Commission has both an obligation and a responsibility to protect the public interest, and promote the interests of consumers. If the FCC opts to abandon the pro-competition UNE-P and broadband framework established by the Telecom Act, just as it begins to deliver real savings and benefits to ordinary consumers, it will have failed on both counts.

We thank you for your consideration of these important issues

Sincerely,

Bill Newton
Executive Director
Florida Consumer Action Network
2005 Pan Am Cir Suite 200
Tampa, FL 33607
813-877-6712
813-877-6651 FAX
Billn@fcan.org

ORIGINAL
EX PARTE OR LATE FILED

From: Ho, Ray
To: Mike Powell
Date: 2/13/03 10:33AM
Subject: Broadband DSL needs line sharing

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MAR 18 2003

Federal Communications Commission
Office of the Secretary

Please keep line sharing as is

Eliminating line sharing will lead to less choice and competition, and higher prices for consumers and small business for broadband services.

It also would slow the penetration of broadband services across the country delaying key benefits that can help the economy

96-98

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ORIGINAL

From: Buntrock, Ross A.
To: Mike Powell, Kathleen Abernathy, Michael Copps, Kevin Martin, Commissioner
Adelstein, Jordan Goldstein, Lisa Zaina, Daniel Gonzalez, Christopher Libertelli, Matthew Brill
Date: 2/13/03 10:47AM
Subject: <No Subject>

96-28

The attached letter was filed by 63 companies in the Triennial Review docket yesterday.

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Federal Communications Commission
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February 12, 2003

Via Electronic Filing

Honorable Michael K. Powell, Chairman
 Honorable Kathleen Abernathy, Commissioner
 Honorable Jonathan Adelstein, Commissioner
 Honorable Michael Copps, Commissioner
 Honorable Kevin Martin, Commissioner
 Federal Communications Commission
 445 12th Street SW
 Washington, DC 20554

Re: ***Ex Parte***
CC Docket Nos. 01-338, 96-98, and 98-147

Chairman Powell and Commissioners:

On February 6, 2003, the National Association of Regulatory Utility Commissioners ("NARUC") proposed a set of unbundling principles and standards that warrants strong and serious consideration in this proceeding.¹ The framework articulated by NARUC is fully consistent with the D.C. Circuit's decision in *USTA*,² and we the undersigned 63 companies - urge the Commission to adopt this framework in the pending Triennial Review proceeding.

Our companies have invested billions of dollars in infrastructure, and have led the way in deploying innovative local telecommunication services to millions of consumers throughout the United States. Our business plans have been developed in reliance upon the twin promises of the 1996 Telecommunications Act and state and federal unbundling rules. State commissions have been the vanguard of our attempts to enter the local market and are the entities in the best position to undertake the "granular impairment" analysis required by *USTA*. The NARUC framework provides for that granularity.

NARUC articulates six principles that lie at the heart of its proposal. Of critical importance to new entrants in local telecommunications markets is the principle that all network elements that currently are made available for leasing pursuant to Section 251(c)(3) of the 1996 Act must continue to be made available until the states determine otherwise. In addition, the NARUC principles make clear that the FCC should not attempt to preempt state decisions, but instead should confirm that Congress gave states

¹ See Letter from David Svanda, President, NARUC, *et al.* to Chairman Powell, CC Docket No. 01-338, 96-98, and 98-147, filed February 6, 2003.

² *USTA v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002) ("*USTA*").

Honorable Michael K. Powell, *et al.*

February 12, 2003

Page 2

the right to establish **additional** unbundling obligations. The final key **aspect of the** NARUC proposal provides that **state commissions must rule on requests to remove items from the list of network elements that incumbents must provide.**

NARUC's proposal would vest the fact-finding and decision-making burdens of **considering** whether to "delist" network elements with **state commissions**. In **this way**, the NARUC **framework** allows the Commission to respond appropriately to the decision of the D.C. Circuit in *USTA*, which directs the Commission to adopt an impairment standard that allows for **detailed fact-based application of the impairment factors rather than a uniform national rule** that applies to every geographic market and customer class. The NARUC **framework** recognizes that the task of identifying specific unbundling needs for particular services offered by entrants to consumers in particular geographic areas is a highly-fact intensive process – a process the FCC cannot accomplish in **this** (or indeed, any other) general, **national** rule-making. The NARUC framework thus avoids the pitfall of implementing unbundling rules of "**unvarying national scope**" that the D.C. Circuit overturned in *USTA*. We believe that the framework contemplated by NARUC would help foster competitive conditions **most** conducive to continued entry, investment and vibrant competition.

At **bottom**, the NARUC **framework** will promote the continued growth and expansion of local competition by **ensuring** that innovative local telecommunications services are available to all consumers – including mass-market residential and small business customers – throughout the country. The **framework** does so by grounding the fact-specific "impairment" issues presented in the *Triennial* Review proceeding in the forums that can resolve them best. To the extent that unbundling obligations would need to be relieved in the future, that impairment analysis must take place on a market-by-market basis and, indeed, on a service-by-service basis. **Since** the NARUC framework recognizes the nuanced "impairment" inquiry that the law requires, we accordingly strongly urge you to follow **this framework** in making your final decision in the *Triennial* Review proceeding.

Sincerely,

/s/

Eric D. Bmwn
President and Founder
A+ American Discount Telecom

/s/

Richard Brown
CEO
AccessPoint, Inc.

Honorable Michael K. Powell, et al.
February 12, 2003
Page 3

/s/

Tom Wright
CEO
Access Integrated Networks

/s/

Michael Conway
Resident and CEO
ACCXX Communications

/s/

Avio Lonstein
CEO
AireSpring

/s/

Becky Watson
Executive Vice President
Apollo Communications

/s/

Tom Gravina
Resident & CEO
ATX Communications

/s/

David Scott
President & CEO
Birch Telecom

/s/

Michael Weprin
CEO
BridgeCom

/s/

Lance C. Honea
CEO
Access One Inc.

/s/

Kevin Schoen
CEO
ACD Telecom, Inc.

/s/

Robert Buchta
President
AMI Communications, Inc.

/s/

Tom **Bade**
President
Arizona Dialtone, Inc.

/s/

Joe Magliulo
President
Best Telecom

/s/

Ken Baritz
CEO
BiznessOnline.com, Inc.

/s/

Vern Kennedy
President & CEO
Broadview Networks

Honorable Michael K. Powell et al.
February 12, 2003
Page 4

/s/

William H. Oberlin
President and CEO
Bullseye Telecom, Inc.

/s/

Jeff Buckingham
President
Call America

/s/

Rust Muirhead
CEO
Connecticut Telephone

/s/

Patrick Freeman
Resident & CEO
Cordia communications

/s/

Gene E. Lane
President & CEO
Direct Line Communications

/s/

Gregg T. Kamper
Senior VP and General Manager
Dominion Telecom, Inc.

/s/

Sean M. Dandley
President & CEO
DSCI Corporation

/s/

Robert Mocas
President
Easton Telewm Services, Inc.

/s/

Ed Jacobs
President & CEO
ECI Communications, Inc.

/s/

Bruce Allen Summers
CEO
Enhanced Communications
Group, LLC

/s/

Richard Smith
President & CEO
Eschelon Telecom Inc.

/s/

Joseph P. Gillette
President & CEO
Eureka Broadband Corp.

Honorable Michael K. Powell, et al.
February 12, 2003
Page 5

/s/

Red Parsons
Executive Vice Resident
eXpelTel

/s/

William Morrow
Vice-Chairman, CEO
Grande Communications

/s/

Richard S. Pontin
President
Ionex Telecommunications, Inc.

/s/

Jonathan Lieberman
Resident
ISN Communications

/s/

Roscoe Young
CEO
KMC Telewm

/s/

Mike Miller
CEO
Line Systems, Inc.

/s/

Gent Cav
President
G4 communications Corp.

/s/

George Pappas
President and CEO
Groveline Communications

/s/

Joseph **Gregori**
CEO
InfoHighway Communications

/s/

Larry Williams
Chairman
ITC^DeltaCom

/s/

Jerry Finefrock
Founder
LDMI Telecommunications Inc.

/s/

Freddie Bleiweiss
President
Loop Zero Networks

Honorable Michael K. Powell, *et al.*
February 12, 2003
Page 6

/s/

Jay Monaghan
Chief ~~Service~~ Officer McGraw
Communications

/s/

Alan L. Creighton
President & CEO
~~Momentum Business Solutions~~

/s/

Paul H. Riss
CEO
New Rochelle Telephone Corp.

/s/

William Bongiorno
President & CEO
NextGen Telephone, Inc.

Id

Brad Worthington
Executive Vice President & COO
NTS Communications, Inc.

/s/

Alan J. Powers
CEO
OneStar Communications, Inc.

/s/

Jerry E. Holt
President
Midwestern Telecommunications, Inc.

/s/

Dennis J. Ferra
CEO
Navigator Telecommunications, LLC

/s/

Jim Akerhielm
Resident & CEO
NewSouth Communications Corp.

Id

William K. ~~Miller~~
President
Northern Telephone & Data Corp.

/s/

Dick Boudria
Pnsident & CEO
NUI Telecom

/s/

Danny Bottom
President & CEO
OnFiber Communications, Inc.

Honorable Michael K. Powell, et al.
 February 12, 2003
 Page 7

/s/

Beverley Kerkas
 Director of Operations
 Planet Access, Inc.

/s/

Dennis Houlihan
 President & CEO
 Sage Telecom

Id

Gabe Battista
 Chairman & CEO
 Talk America, Inc.

/s/

Bill Linsmeier
 President & CEO
 TCO Network Inc.

/s/

A. Joe Mitchell, Jr.
 President & CEO
 VarTec Telecom
 /s/

Gregg Smith
 CEO
 Z-Tel Technologies, Inc.

/s/

David C. McCourt
 Chairman & CEO
 RCN Telecom Savices, Inc.

/s/

Jack Dayan
 President & CEO
 Spectrotel

/s/

Dale Schmick
 Vice President
 The Pager & Phone Company

/s/

Daniel I. Galkin
 COO
 TMC Communications Inc.

Id

Mark Senda
 CEO
 Xspedius Management co., LLC

cc: **Dan Gonzalez** (by electronic mail)
 Matthew Brill (by electronic mail)
Jordan Goldstein (by electronic mail)
 Lisa Zaina (by electronic mail)
 Senator John McCain (by overnight mail)
 Senator Fritz Hollings (by overnight mail)
 Mr. Karl Rove (by overnight mail)

ORIGINAL
EX PARTE OR LATE FILED

From: info@fflhouncil.org
To: mpowell@fcc.gov, Christopher Libertelli
Date: 2/13/03 10:37AM
Subject: Proposed Rule Regarding Fiber to the Home

RECEIVED

February 13, 2003

MAR 18 2003

Dear Chairman Powell:

Federal Communications Commission
Office of the Secretary

CC: Christopher Libertelli

I understand that one of the Commission's goals in the UNE proceeding is to give the incumbents an incentive to invest in next generation facilities. We agree with that goal, and we presented a means for achieving this goal in our meetings with the Commission on January 17, 2003.

96-98

In this regard, we understand that there is some sympathy in the Commission for our proposals to accelerate fiber to the home ("FTTH"). Apparently, there is a consensus within the Commission for relieving FTTH from the unbundling and wholesale pricing rules in new builds and overbuilds. We understand, however, that you are struggling with the issue of how to deal with the existing copper loop in overbuild situations.

We believe this is a critical issue because it will have a profound effect on the rate of FTTH deployment. For example, if FTTH deployment is restricted to "new builds", we can expect only 1 - 2% of the access lines to be converted to next generation technology annually. This will simply be an insufficient volume to sustain the development of a FTTH industry. At this slow pace, it will take at least 50 years to achieve universal deployment.

On the other hand, if overbuilds are included in the equation, the rate of deployment will increase to 3 - 5% access lines annually. This will sustain the industry and achieve a reasonable pace of deployment.

So, the key is giving the ILECs an incentive to deploy in overbuild situations while not disadvantaging the CLECs that are using the existing copper loops. But a more fundamental issue is how to deal with the copper facilities that are used now but will, in time, become either obsolete or inadequate for higher capacity services and applications.

One way this may be achieved in the current environment and still promote FTTH deployment, is by relieving FTTH from the unbundling and wholesale pricing rules in overbuild situations, while still maintaining the copper loop where it is still being used by CLECs. Also, requiring the incumbents to keep the existing copper loop "connected" to customers served by fiber in the loop and do not require the ILEC to incur relief and rehabilitation expenses until such time as the CLEC requests access.

This approach would give the CLECs access, but not require the incumbents to incur needless expenses to maintain the copper loop unless a CLEC needs it. It seems to us that sound public policy would not require ILECs to incur expenses to maintain facilities that would, in all

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likelihood, never be used be used again by the vast majority of consumers

Please see the attached proposed rule.

Thank you for your consideration

Respectfully submitted,

**Michael DiMauro
President, Board of Directors**

**James Salter
Past President, Board of Directors**

**FTTH Council
607-962-1983
ftthcouncil.org**

Proposed Rule Regarding Fiber to the Home

To be inserted ~~as~~ a separate subsection in 41 C.F.R. § 51.319(a).

(X) Fiber to the home. Notwithstanding any other provision of this section, an incumbent local exchange carrier is not required to unbundle a loop (and equipment attached thereto), or any portion of a loop, that utilizes optical fiber from the central office all the way to a residential customer's premise (a "FTTH loop").

(i) New builds. Where an incumbent local exchange carrier deploys a FTTH loop to a residence that has no existing loop, it shall not be required to deploy a copper loop in addition to the FTTH loop.

(ii) Overbuilds. Where (A) an incumbent local exchange carrier deploys a FTTH loop to a customer's residence that is served by existing copper loop, and (B) the customer does not also subscribe to service from a competitive local exchange carrier using the existing copper loop, the incumbent local exchange carrier shall leave the existing copper loop connected to the customer's premise, but shall not be required to incur any expenses to ~~assure that~~ the existing copper loop remains capable of transmitting signals. If the customer subsequently elects to obtain service ~~from~~ a competitive local exchange carrier, the local incumbent exchange carrier shall, if necessary, restore the existing loop to serviceable condition.

(iii) Existing loop retirement. Where an incumbent local exchange carrier elects to retire an existing copper loop that is connected to a customer who is served by FTTH, it shall petition the Commission for approval of such retirement and the Commission shall make its determination ~~on~~ such petition within 90 days of submission.

EX PARTE OR LATE FILED

From: Fred Roughton
To: Mike Powell
Date: 2/13/03 12:09PM
Subject: What is Line Sharing?

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MAR 18 2003

ORIGINAL

Subject: What is Line Sharing?

Federal Communications Commission
Office of the Secretary

96-88

Line sharing is not a business term. It is a technology. It has nothing to do with competition unless you take it away.

Line sharing, which became technically possible in 1999, is simply the ability to run DSL over the same wire for which the consumer has already paid for voice.

If you remove it from the UNE list you have not gotten rid of line sharing. You have only gotten rid of the Bells being able to line share.

You have created a death knell for every facilities based DSL provider because if they want to sell the consumer DSL they will have to pay the Bell for a separate line and charge the customer for a separate line while the Bell will laughingly provide their own DSL on a line shared basis.

There could be no greater example of an un-level playing field.

If the Commissioners really want to take away line sharing then they should take it away from EVERYONE, including the Bells.

Make everyone buy an unnecessary second line.

The whole notion of taking away line sharing from only the competitors is so preposterous that it is hard to talk about it calmly.

We must preserve competition in DSL going forward. Please retain linesharing in your TR

Yours truly,

Frederick E. Roughton

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1426 Cedar Lane

Norfolk, Va. 23508

757-423-5888

ORIGINAL
EX PARTE OR LATE FILED

From: Sandra Haverlah
To: Mike Powell
Date: 2/13/03 1:07PM
Subject: Letter from Texas Consumer Association

Texas Consumer Association
44 East Avenue, Suite 202
Austin, Texas 78701

96-98

February 12, 2003

Chairman Powell:

Almost seven years after Congress passed the groundbreaking Telecommunication Act, the promise of real local phone competition is finally starting to become a reality for consumers in Texas.

According to the most recent data released by your agency, new market entrants provide service to more than sixteen percent of local telephone lines in Texas, a dramatic increase from only four percent in December 1999. As a result, millions of Texas residents are now benefiting from greater choice and better pricing in local phone service

However, just as competition begins to take hold, we understand that the Commission is considering a proposal that would significantly scale back or even eliminate the very regulations - known as Unbundled Network Element Platform, or UNE-P - that have played a critical role in promoting the recent surge in local phone competition.

Were the Commission to initiate such a major reversal of policy, all the progress that has been made in Texas to bring real local phone competition to residential markets would be reversed. Once again, consumers would be stuck with little or no choice, and the savings and service improvements that accompany increased competition would quickly evaporate.

Rather than adopting policies that would only serve to undermine telecom competition, we urge the Commission to demonstrate its commitment to the interests of consumers, and the future of competition, by reaffirming your support for UNE-P.

Indeed, according to a report issued recently by the National Association of State Consumer Advocates, the continued existence of UNE-P is vital to the future of local competition in local markets across the country.

The report found that, in many markets, the vast majority of residential and small business consumers who have switched their local phone service to a new competitor are served by market entrants who rely on the UNE-P system. In Texas, for example, competitors that depend on UNE-P provide service to 77 percent of switched customers. Without the current UNE-P structure, the report concludes, "it is unlikely that even the limited amount of residential competition that exists today could survive."

It is also critical that the Commission preserve the position of state regulators in maintaining and promoting competition in our telecom markets. State utility regulators like the Public Utility Commission of Texas have played a vital part in opening local telephone markets across the country up

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Office of the Secretary

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to competition, and we believe that they are best placed to make decisions that impact local markets.

For local phone competition to continue to develop and flourish, state authorities must continued to have the flexibility to carry out their Congressionally mandated role of keeping local telephone markets open, and setting fair UNE-P prices.

Moreover, the Commission proposals that limit open access to communications networks, including fiber networks are wrong. Without open, non-discriminatory access to broadband networks, consumers will not realized the full potential of the Internet. Recent FCC decisions on broadband access policy threaten to inhibit innovation ad consumer choice in the high-speed Internet marketplace.

The Federal Communications Commission has both an obligation and a responsibility to protect the public interest, and promote the interests of consumers. If the FCC opts to abandon the pro-competition UNE-P and broadband framework established by the Telecom Act, just as it begins to deliver real savings and benefits to ordinary consumers, it will have failed on both counts.

We thank you for your consideration of these important issues

Sincerely,

Sandra Haverlah
President Texas Consumer Association

cc: Commissioners Martin, Abernathy, Adelstein and Copps

CC: Kevin Martin, Kathleen Abernathy, Commissioner Adelstein, Michael Copps

ORIGINAL

EX PARTE OR LATE FILED

From: Douglas Gorden
To: Mike Powell
Date: 2/13/03 1:36PM
Subject: Fw: please assist us

Dear sir, This came up on my computer and thought you might want to check it out. Douglas Gorden. gordens@wt.net

Original Message -----

From: "lugard oluna" <lugard@mail.co.za>
 To: <lugard.oluna@caramail.com>
 Sent: Tuesday, February 11, 2003 10:51 PM
 Subject: please assist us

RECEIVED

MAR 18 2003

Federal Communications Commission
 Office of the Secretary

> BOARD OF TRUSTEE, DEPARTMENT OF PETROLEUM RESOURCES
 > DPR Building, Victoria-Island, Lagos.
 > FROM THE OFFICE OF: LUGARD OLUNA, (MNIM).
 > TELEPHONE NUMBER: 234-1-7744594
 > DIRECT AMERICAN INTERNET FAX NUMBER: 1 810 885 1899

>

> Dear Sir,

>

> BUSINESS PROPOSAL: TRANSFER OF US\$15.6M (FIFTEEN MILLION
 > SIX HUNDRED
 > THOUSAND UNITED STATES DOLLARS). BUSINESS INVESTMENTS
 > PARTNERSHIP.

>

> Good day to you.

> You were introduced to us in confidence through the Chamber
 > of Commerce,

> Foreign Trade Section. The reason for this letter is that
 > your help is being

> sought in order to facilitate and successfully complete a
 > profitable venture

> that is of immense benefit to you, and us the originators
 > within a

> stipulated time frame.

>

> I am Lugard oluna, a director with the Department of

> petroleum resources (DPR) and the

> Secretary of the Contract Award and Monitoring Committee

> (CAMC) of the

> Department Of Petroleum resources (DPR). This profitable

> venture involves the

> sum of US\$15,600,000.00 (Fifteen million Six hundred

> thousand United States

> Dollars) which is presently in an account of the DPR with

> the Central Bank

> of Nigeria (CBN). We need your help as a foreigner to help

> transfer this

> sum of US\$15.6M (Fifteen million Six hundred thousand

> United states dollars).

> We cannot make this transfer on our own or in our names for

> the fact that we

> are civil servants (still in active service). But you as a

> foreigner can

96-98

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- > assist **us** in the sense that the money to be transferred
- > will be paid to
- > you as a contract entitlement for a purported contract
- > executed for my
- > government. The money in question is ready for transfer
- > into an overseas
- > account which we expect you to provide.
- > We have agreed that the money will be shared according to
- > the ratio stated
- > below;
- > a) 20% of the money will go to you for acting as the
- > beneficiary of the
- > fund.
- > b) 75% to **us** originators (which if possible we may enter
- > into a partnership
- > with you).
- > We will require from you:
- > a) Name and address of Company or Beneficiary.
- > b) Details of the account which you are the only signatory
- > that the money
- > will be transferred into.
- > The above requirements is to legalise the claim for payment
- > and transfer
- > of the money to your account. Be informed that the reason
- > we are sending you
- > this letter is because we know that the only way to succeed
- > is to seek the
- > help of a foreigner. Your professional status is not a
- > matter of hindrance
- > in
- > this transaction. Please, your assistance is highly
- > solicited. We have no
- > doubts at all that this money will be released and
- > transferred if we get the
- > necessary foreign partner to assist **us** in this deal.
- > Therefore, when the business is successfully concluded we
- > shall through the
- > same connections withdraw all documents used from all the
- > concerned
- > government
- > ministries for 100% security. **All** expenses regarding the
- > opening of an
- > account
- > if not already in existence shall be borne by you, all
- > expenses are however
- > reimbursable on the conclusion of this business
- > transaction. It is of high
- > hope that you will consider this humble request and respond
- > positively.
- > If you are still in doubt after the receipt of this letter
- > please **do** not
- > hesitate to contact and ask any question(s) that may hinder
- > your decision
- > on this matter. If in the alternative you are indisposed
- > please an
- > acknowledgement of the receipt of this letter will be

- > appreciated stating
- > such.
- > Please acknowledge the receipt of this letter if you are
- > interested. For
- > more **details** on this transaction you can call me on my
- > telephone number
- > 234-1-774-4594. The telephone line may be busy, please
- > keep on
- > trying till
- > you get through.
- > While awaiting your early response, thank you in
- > anticipation of your most
- > valued assistance.
- >
- >
- > Yours faithfully,
- > Dr. Lugard Oluna, (MNIM).
- >
- >
- > P.S. PLEASE TREAT US URGENT AND CONFIDENTIAL
- >

ORIGINAL

From: Weeks, Wendell P
To: Mike Powell
Date: 2/13/03 3:34PM
Subject: Overbuild Proposal

EX PARTE OR LATE FILED

96-4BI

CC: Kathleen Abernathy, Commissioner Adelstein, Michael Copps, Kevin Martin,
'cliberte@ff.gov', Matthew Brill, Lisa Zaina. Jordan Goldstein, Daniel Gonzalez

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CORNING
Discovering Beyond Imagination

Wendell P. Weeks
President
& Chief Operating Officer

Corning Incorporated
One Riverfront Plaza
MP-HQ-W2-36
Corning, NY 14831

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February 13, 2003

The Honorable Michael Powell
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

Dear Chairman Powell:

We appreciate your interest in the welfare of the fiber optics industry. As you know, we are struggling, and we believe the Commission has the power to pull us out of our depression.

As we approach the end of the process in the UNE Review, I would like to bring a serious issue to your attention that has the potential to undermine the economics of fiber deployment for most of the country. The issue is how existing copper loops will be treated in so-called "overbuild" situations where incumbents deploy fiber to the home to customers that are currently served by copper. We understand there *is* some support in the Commission for maintaining the copper to give the CLECs access to the customer.

We agree with the policy goal, but we have a better **way** to achieve it, one that will not discourage the deployment of fiber to the home.

Specifically, we recommend that the ILECs be required, in overbuild situations, to keep the existing copper "connected" to customers served by fiber to the home, but not be required to spend resources to maintain the copper until a CLEC requests access. This will enable the CLECs to gain access to the customer, but not require the incumbents to incur needless expenses. We believe that expending resources to maintain the copper in overbuild situations *would be* needless because it is very unlikely that a customer will shift back to the old copper technology after they have experienced the tremendous benefits of fiber to the home.

If the incumbents are required to spend significant resources to maintain a copper plant along with a fiber to the home facility, they are unlikely to invest in overbuild situations. The majority of the market for new technology is in overbuild situations, and we need overbuild deployment to sustain the industry.

Thank you again for your kind consideration in this important matter.

Sincerely,

cc: Commissioner Kathleen Abernathy
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Kevin Martin
Christopher Libertelli, Legal Advisor, Chairman Powell



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